

Ministère de la Justice Canada

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2016-021850

#### MEMORANDUM FOR THE MINISTER

## Animal Fighting and Bestiality Meeting with Humane Society International

#### ISSUE

You have requested information on animal fighting and bestiality for a meeting with Humane Society International.

#### BACKGROUND

Humane Society International (HSI) has expressed the view that despite recent amendments to the animal cruelty regime of the *Criminal Code* that increased penalties, "the application and scope of the current laws remain ineffective." They criticize the law for not providing "protection for animals being trained to fight each other" because it is "not an offence to train animals to fight nor to accept money from animal fighting. The requirement to catch perpetrators in the act—makes it very difficult to prosecute cases of dog fighting". (The Canadian Federation of Humane Societies and other Canadian animal welfare stakeholders have expressed the same concerns).

In regards to bestiality, HSI expressed the view that the law contains a "possible loophole that could allow some cases of bestiality to go unprosecuted," likely in reference to the interpretation given to that offence by the Supreme Court of Canada (SCC) in the recent case of D.L.W. (2016).

HSI had expressed support for former Private Member's Bill C-246, which (among other things) would have added to the animal cruelty regime specific offences for receiving money for the fighting of animals, breeding, training, transporting an animal to fight another animal, and would have created a new definition of bestiality to enlarge its scope. Bill C-246 was defeated at Second Reading on October 5, 2016.

#### Animal Fighting

Currently, under the heading of Cruelty to Animals in Part XI of the *Criminal Code* (entitled Wilful and Forbidden Acts in respect of certain Property), there are a range of offences for conduct against animals, including a specific prohibition in relation to fighting of animals (hybrid, maximum penalty of 5 years on indictment):

#### Causing unnecessary suffering

- 445.1 (1) Every one commits an offence who ...
- (b) in any manner encourages, aids or assists at the fighting or baiting of animals or birds; Section 445.1 includes an evidentiary presumption to aid in the prosecution of individuals for offences related to animal fighting:
  - 445.1 (4) For the purpose of proceedings under paragraph (1)(b), evidence that an accused was present at the fighting or baiting of animals or birds is, in the absence of any evidence to the contrary, proof that he or she encouraged, aided or assisted at the fighting or baiting.

#### Bestiality

Section 160 of the Criminal Code creates three separate bestiality-related offences, but does not define the term "bestiality:"

- committing bestiality (hybrid, maximum penalty 10 years on indictment);
- compelling another person to commit bestiality (hybrid, maximum penalty 10 years on indictment); and,
- committing bestiality in the presence of a person under 16 years/inciting a person under 16 years to commit bestiality (hybrid, maximum penalty 14 years on indictment and mandatory minimum penalty one year on indictment and 6 months on summary conviction).

Earlier this year, the SCC released its decision in the D.L.W. case. D.L.W. was convicted of a number of child sexual offences against his step-daughters, including being a party to the offence of bestiality (subsection 160(1)). Specifically, he applied peanut butter to the vulva of one of the complainants, brought the family dog into the bedroom and videotaped the interaction between the dog and the complainant.

The legal issue before the Court was whether non-penetrative sexual activity between a human and an animal constituted bestiality. The SCC reviewed the legislative history of the provision and concluded that penetration (vaginal or anal) had always been and continues to be an essential element of the offence of bestiality. The accused's acquittal on the bestiality charge was upheld, but he was convicted of numerous sexual offences and received a 16 year sentence.

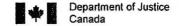
CONSIDERATIONS

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Ministère de la Justice Canada

FOR INFORMATION
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#### TITRE/TITLE: Meeting with Humane Society International

#### SOMMAIRE EXÉCUTIF/EXECUTIVE SUMMARY

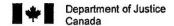
- You are meeting with Humane Society International to discuss specific issues with the criminal law of animal cruelty.
- The Criminal Code expressly prohibits some forms of conduct related to animal fighting, but does not expressly prohibit training animals to fight other animals or profiting from animal fighting. However, existing offences may be capable of capturing these forms of conduct.
- A recent Supreme Court ruling on the offence of bestiality has found that it is limited to acts of sexual intercourse between a human and an animal.
- You have indicated that work will continue on these issues.

Soumis par (secteur)/Submitted by (Sector): Policy Sector

Responsable dans l'équipe du SM/Lead in the DM Team: Caroline Leclerc

Revue dans l'ULM par/Edited in the MLU by: Matt Ignatowicz

Soumis au CM/Submitted to MO: October 13, 2016



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#### **CONSIDERATIONS**

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of the Access to Information Act de la Loi sur l'accès à l'information

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### CONCLUSION

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